

It's All About the Money: Ethical Issues with Fees

Sarah Nelson, *Jackson Nelson, PLLC*

Tammy McClenney, *Randall, McClenney, Daniels & Dunn*

Megan Wickre, *Wickre Law, PLLC*



Agenda Highlights

1. Introduction: Why Technology Ethics Matter for Virginia Lawyers
2. Competence in the Age of AI and Automation
3. Website Marketing and Keyword Advertising
4. Social Media and Professionalism
5. Billing Practices in a Tech-Enhanced Practice
6. Client Communications: Navigating AI-Enhanced Client Interactions
7. Conclusion: “Steer the Corvette Responsibly”

The Importance of Technology Ethics in Family Law





**Sure, let's accelerate
building AI, but
can we also steer?**

Accelerating Technology and Its Impact on Legal Practice



Moore's Law and Tech Growth

Moore's Law predicted computers would get twice as powerful every two years while getting cheaper. In law, we are not immune to this reality and these resources.

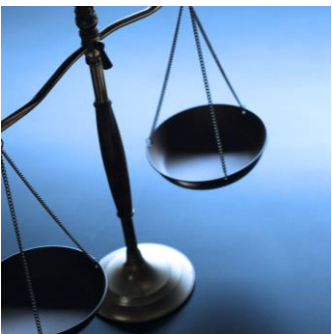


Technology in Legal Practice

Legal professionals increasingly use AI, social media, and digital marketing to enhance practice and client engagement.

“It’s like choosing to use a typewriter when Microsoft Word is available”

“If we don’t keep up, we will be left behind”

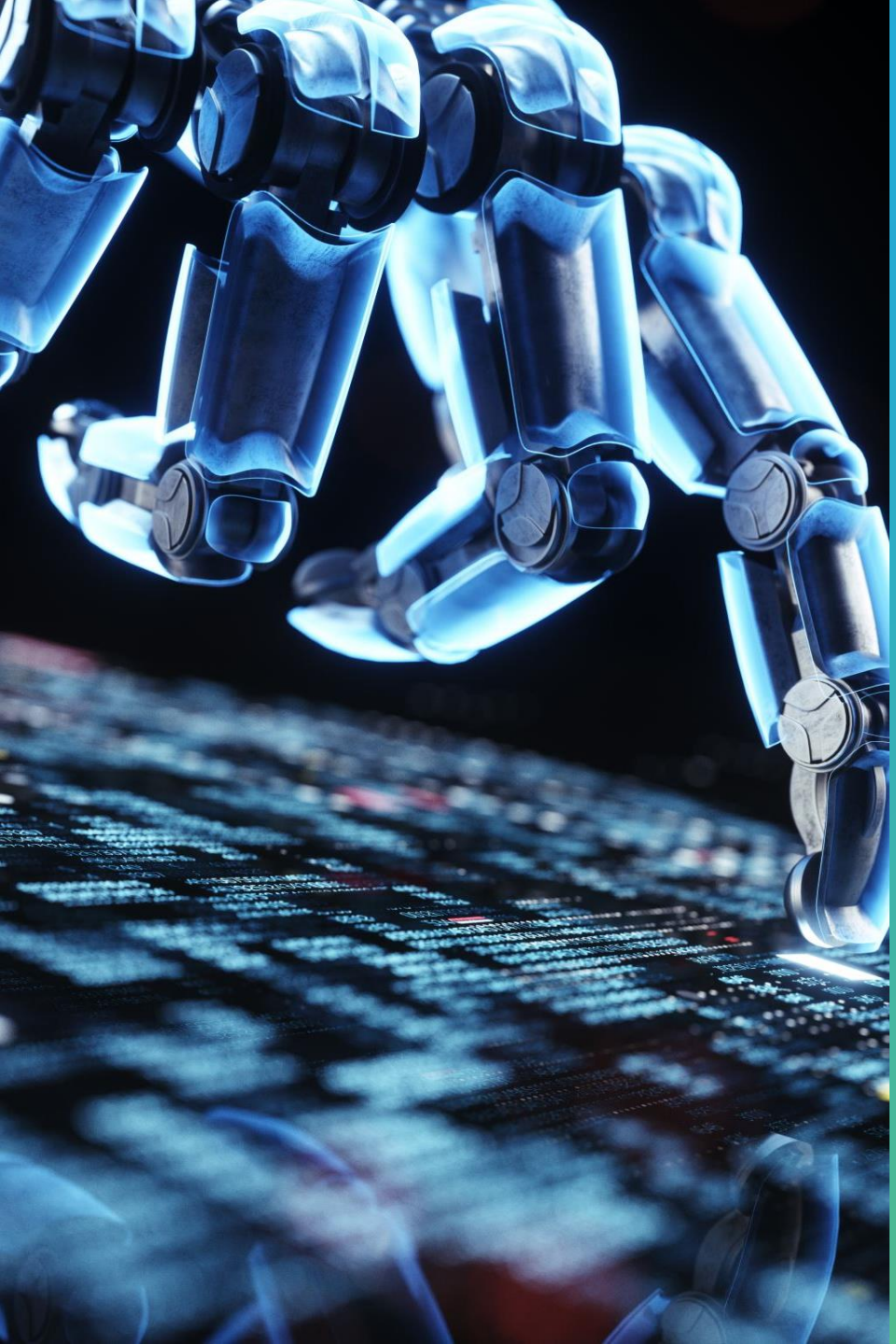


Ethical Challenges in Tech Use

This section explores the ethical implications of these modern practices, offering practical guidance to avoid common pitfalls in a technology-driven legal environment.

We will move from technology used to market someone to becoming a client, considerations when they are becoming a client, and necessary concerns once they are a client.

.



Competence in the Age of AI and Automation



Ethical Standards for Technological Competence

Rule 1.1 Competence

Virginia attorneys must keep updated on technological advancements relevant to their legal practice to maintain competence.

Understanding Benefits and Risks

Lawyers are required to comprehend both benefits and risks related to relevant technologies as stated in Comment 6.

Responsible Use of AI

Although AI improves efficiency, attorneys must ensure accuracy and carefully review AI-generated content to avoid ethical violations.



Hypotheticals and Attorney Responsibilities

AI-Generated Legal Errors

Submitting AI-generated briefs with false case law violates competence and candor ethical rules, risking misrepresentation accusations.

Supervisory Responsibility

Supervising attorneys are ethically responsible for oversight when non-lawyer staff use AI, ensuring confidentiality is maintained.

Technology Adoption Ethics

Refusing to adopt modern technology may breach ethics if it impacts client confidentiality, competence, or efficiency.



Supervision, Training, and Ongoing Skill Development

Balancing Reliance and Oversight

Attorneys must carefully balance trust in AI tools with diligent supervision to uphold ethical responsibilities.

Active Supervision of AI Outputs

Verification of AI-generated results is essential to ensure accuracy and maintain legal ethical standards.

Continuous Training and Skill Updates

Attorneys must regularly update their technical skills as new technologies emerge to comply with Rule 1.1.



Website Marketing and Keyword Advertising

Ethical Boundaries in Keyword Advertising and Search Results

Definition of Keyword Advertising

Keyword advertising lets businesses bid for search terms to display ads prominently in search results.

Ethical Restrictions for Attorneys

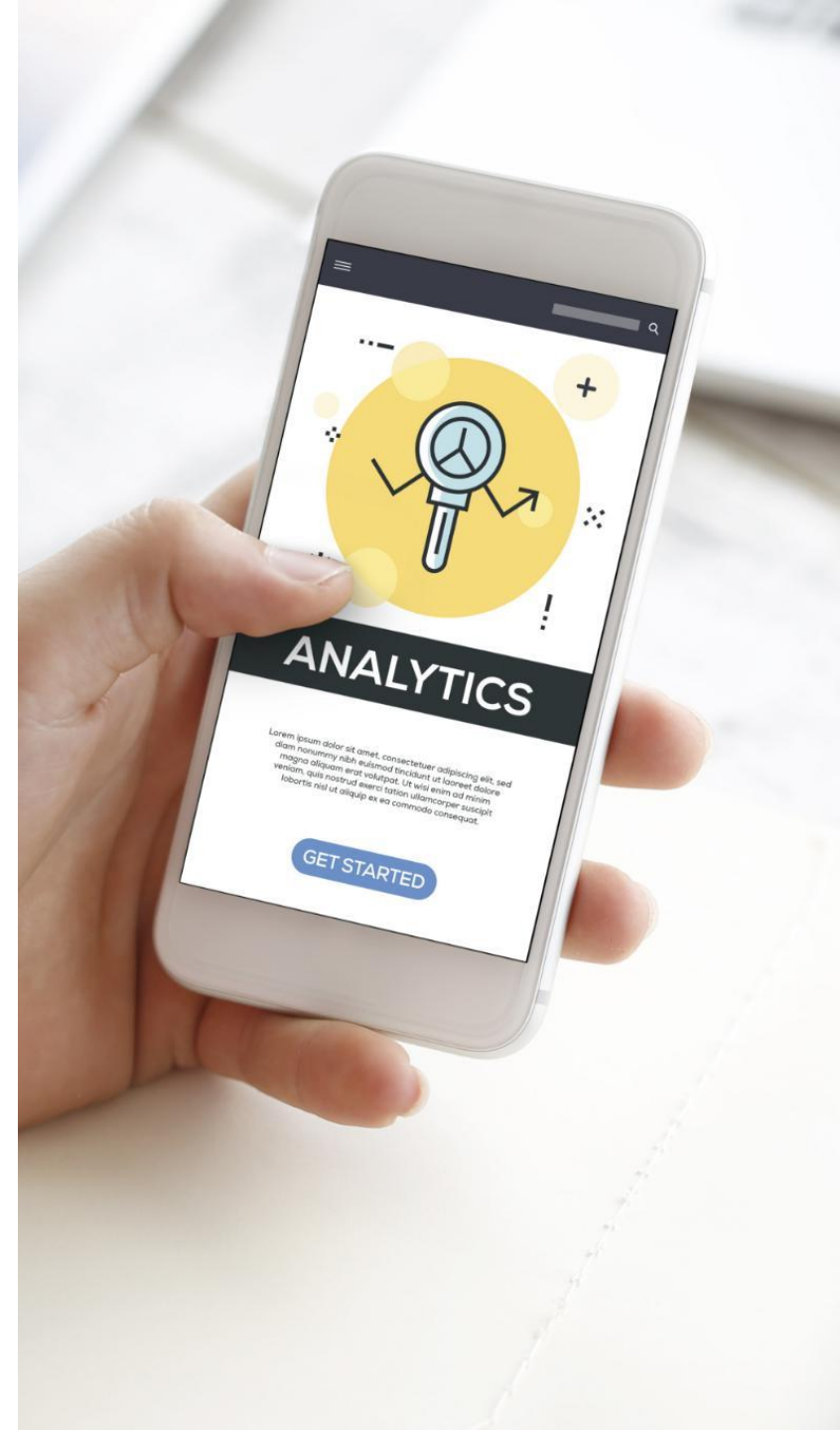
Virginia Rule 7.1 prohibits misleading legal advertisements, banning keyword advertising for attorneys.

Types of Search Results

Search results include organic, paid ads, and boosted results, often hard for users to distinguish.

User Awareness Challenges

Many users cannot differentiate paid or boosted ads from organic results, impacting transparency.



Real-World Scenarios: Firm Rebranding and Competitor Tactics

Firm Rebranding Process

Firm owner appointed judge required rebranding by purchasing and renaming the existing entity.

Competitor Online Tactics

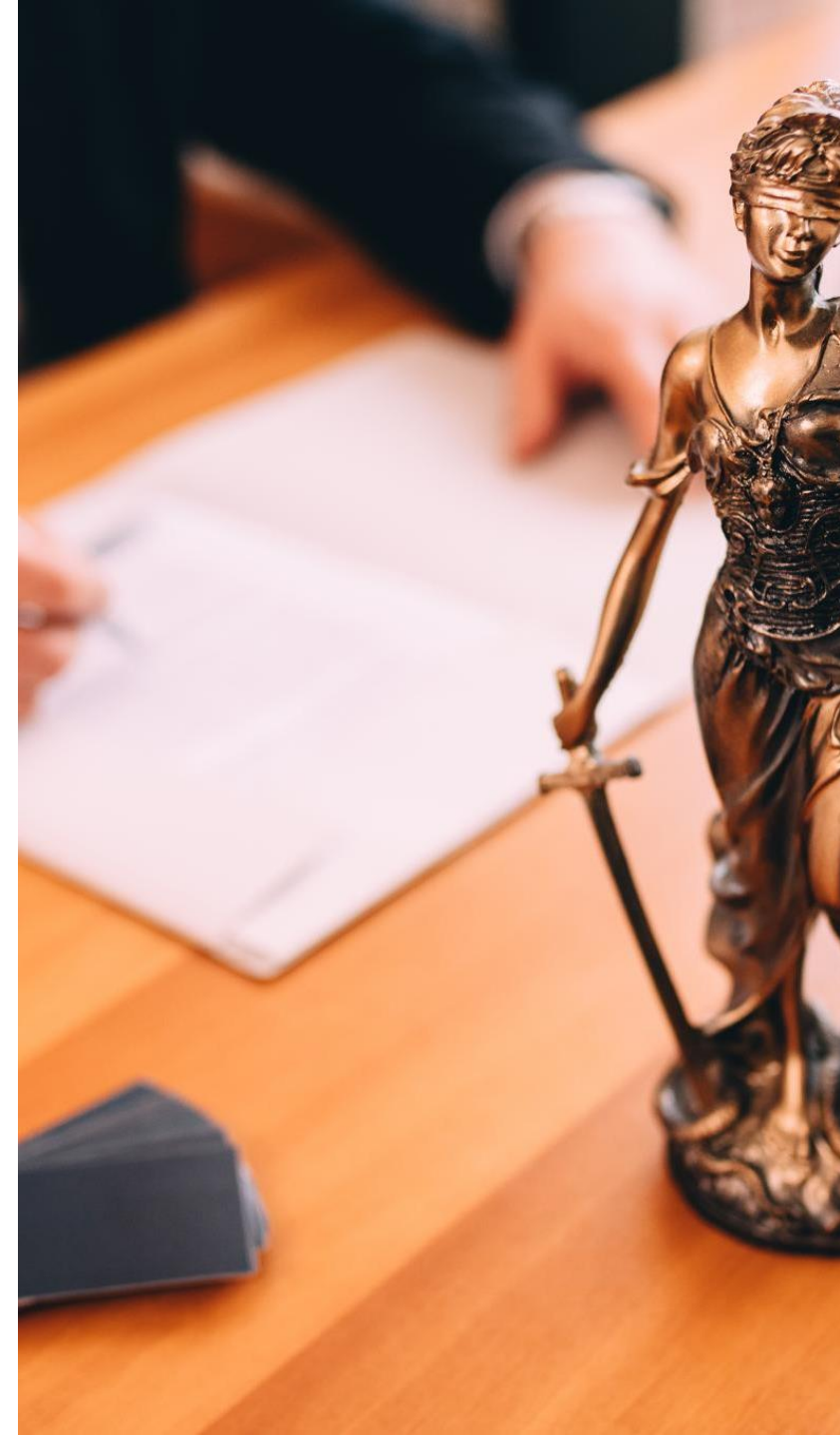
Competitor bought similar domain names and bid on keywords redirecting web traffic to their firm.

Ethical Considerations

Bidding to regain firm name was considered unethical and possibly violating legal rules.

Client Impact and Resolution

Don't fight fire with fire



Comparative Approaches from Other Jurisdictions

North Carolina

Florida

Maryland

Mississippi

New Jersey

Ohio

Texas

America Bar Association



AI-Generated Reviews and Online Misrepresentation

Rise of AI-Generated Reviews

AI-generated law firm reviews have surged by over 1500% since 2022, raising concerns of false advertising online.

Ethical and Legal Issues

Fake AI reviews violate ethical rules and consumer protection laws, impacting trust in legal service advertising.

Government Regulation

FTC rules prohibit fake reviews and impose penalties up to \$51,744 per violation to combat online misrepresentation.



Hypotheticals: Family Law Marketing Ethics in Practice

Advertising Bidding Ethics

Bidding on competitors' names is likely unethical under Virginia rules due to misleading advertising concerns.

Misleading Practice Area Listings

Listing unrelated practice areas may mislead clients, potentially violating ethical communication rules.

AI-Generated Fake Reviews

Using AI-generated fake client reviews to exaggerate services violates ethics rules against false communications.

Malicious Use of AI Reviews

Generating negative AI reviews to damage competitors breaches rules against dishonesty and unethical conduct.



Best Practices for Ethical Online Marketing

Transparency in Marketing

Ensure clear and honest communication when managing keyword competition in online marketing.

Accurate Representation

Represent services truthfully to avoid misleading potential clients in keyword advertising.

Avoiding Deceptive Practices

Refrain from using deceptive techniques that could mislead users or competitors online.



Social Media and Professionalism for Family Law Attorneys





Importance of Disclaimers

Disclaimers prevent misleading claims by clarifying that results may vary per individual situations.

Jurisdictional Clarity

Clearly stating the governing jurisdiction avoids confusion for audiences across different states or regions.

Careful Language Use

Using cautious words like 'can' or 'may' reduces risk of unintended reliance or misleading statements.

Avoiding Legal Advice Online

Providing general information only avoids creating unintended attorney-client relationships and ethical issues.

Engagement and Referrals in Online Communities

Ethical Referral Responses

Attorneys can provide their firm's contact info when responding to referral requests without violating solicitation rules.

Correcting Legal Misinformation

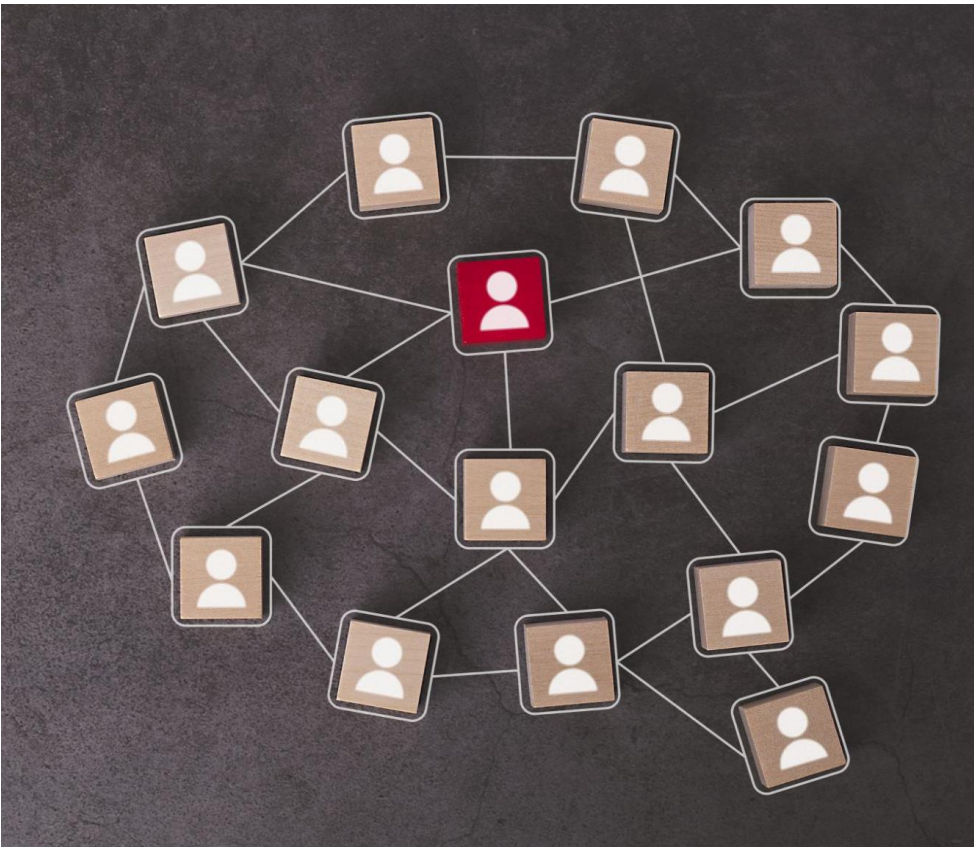
Ethically suggest consulting a lawyer when correcting inaccurate legal advice without applying law to facts publicly.

Handling Anonymous Posts

Remind anonymous posters about conflict checks and consider risks when engaging with unknown or opposing parties.

Tagging and Identity

Tagged referrals follow existing rules; users may engage with displayed names, so long as they are avoiding misleading identities.





Risks and Problematic Conduct on Social Platforms

Risks of Client's False Online Engagement

Engaging with parties online based on false facts can create records harmful to litigation and client confidentiality.

Impact of Provocative Content

Posting provocative or hateful content for marketing can backfire if clients or opposing parties interact with it.

Social Media Hypotheticals and Policy Recommendations

Ethical Risks of Online Legal Advice

Publicly applying law to specific facts risks unintended attorney-client relationships and ethical violations.

Client Testimonials and Disclaimers

Posting testimonials without disclaimers may mislead clients, raising ethical concerns under advertising rules.

Use of Pseudonyms by Attorneys

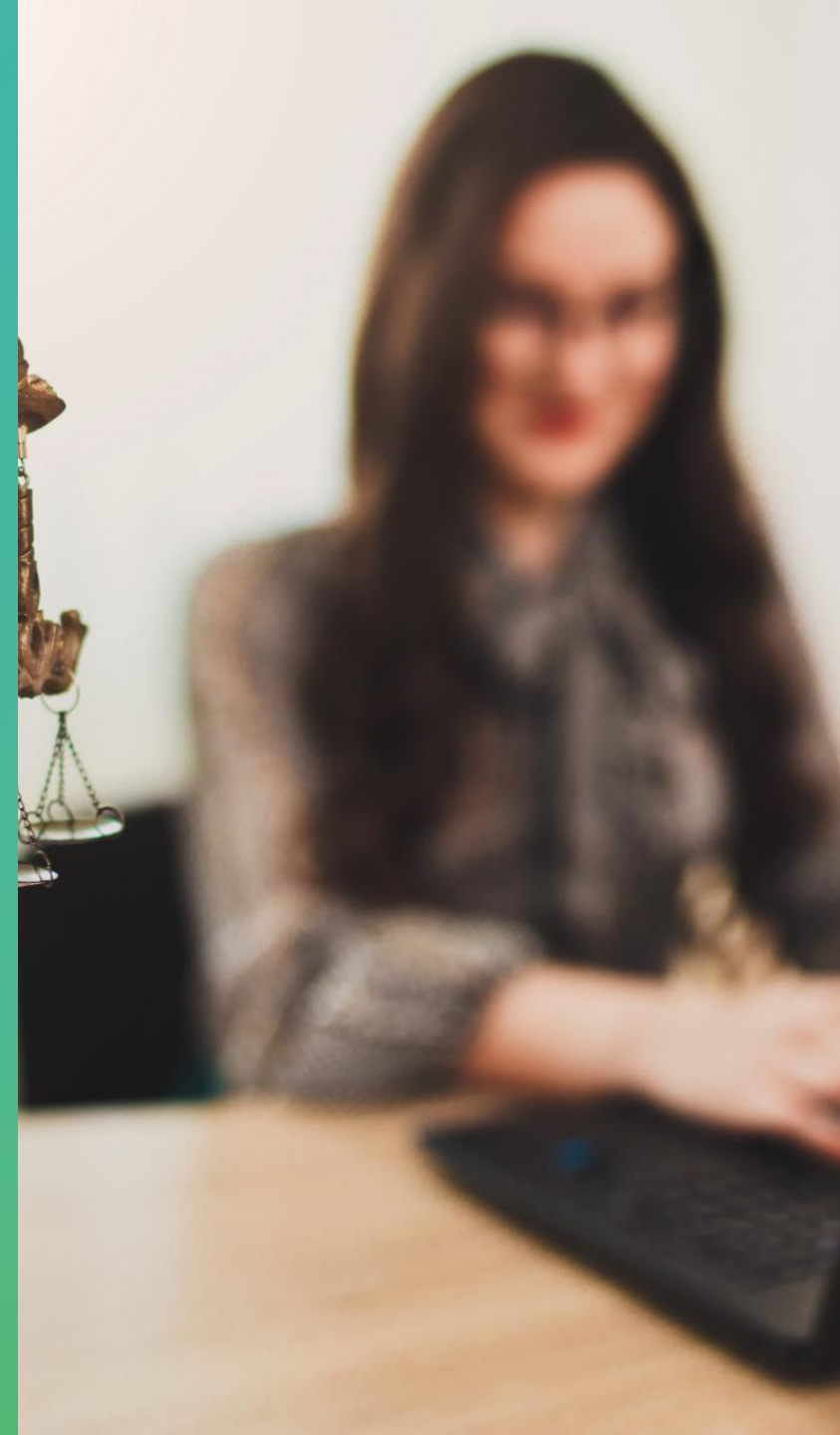
Using pseudonyms can mislead professional identity and raise ethical questions depending on context.

Recommendations for Social Media Policy

Firms should implement policies to ensure ethical compliance and include necessary disclaimers in posts.



Billing Practices in a Tech- Enhanced Family Law Practice



Virginia LEO 1901: Billing with Generative AI and Reasonable Fees

Ethical Billing Guidance

LEO 1901 provides guidance on ethically billing clients when using generative AI tools in legal services.

Reasonable Fee Factors

Rule 1.5(a) identifies key factors like time, skill, community fees, and results to determine fee reasonableness.

AI and Fee Transparency

Fees must be transparent and reasonable whether legal work is done by humans or enhanced by AI tools.



A man with a beard, wearing a dark suit and white shirt, is looking down at a laptop screen. The image is overlaid with a futuristic digital graphic consisting of concentric circles, lines, and dots, suggesting a high-tech or AI theme. The background is a light, textured surface.

Transparency, Fee Disclosures, and Client Communication

Fee Disclosure Requirements

Lawyers must clearly explain fees, especially when AI impacts service nature, efficiency, or cost.

AI Impact on Fees

Efficiency gains from AI do not automatically require fee reductions; attorney expertise remains vital.

Jurisdictional Differences

Virginia rejects automatic fee cuts, unlike ABA and North Carolina, highlighting lawyer judgment value.

Client Communication

Lawyers must transparently communicate fee justification when AI affects service quality or value.

Practical Steps for Transparency and Compliance

Clear Engagement Agreements

Use explicit language in agreements about generative AI's role in legal services and its impact on cost and quality.

Open Client Communication

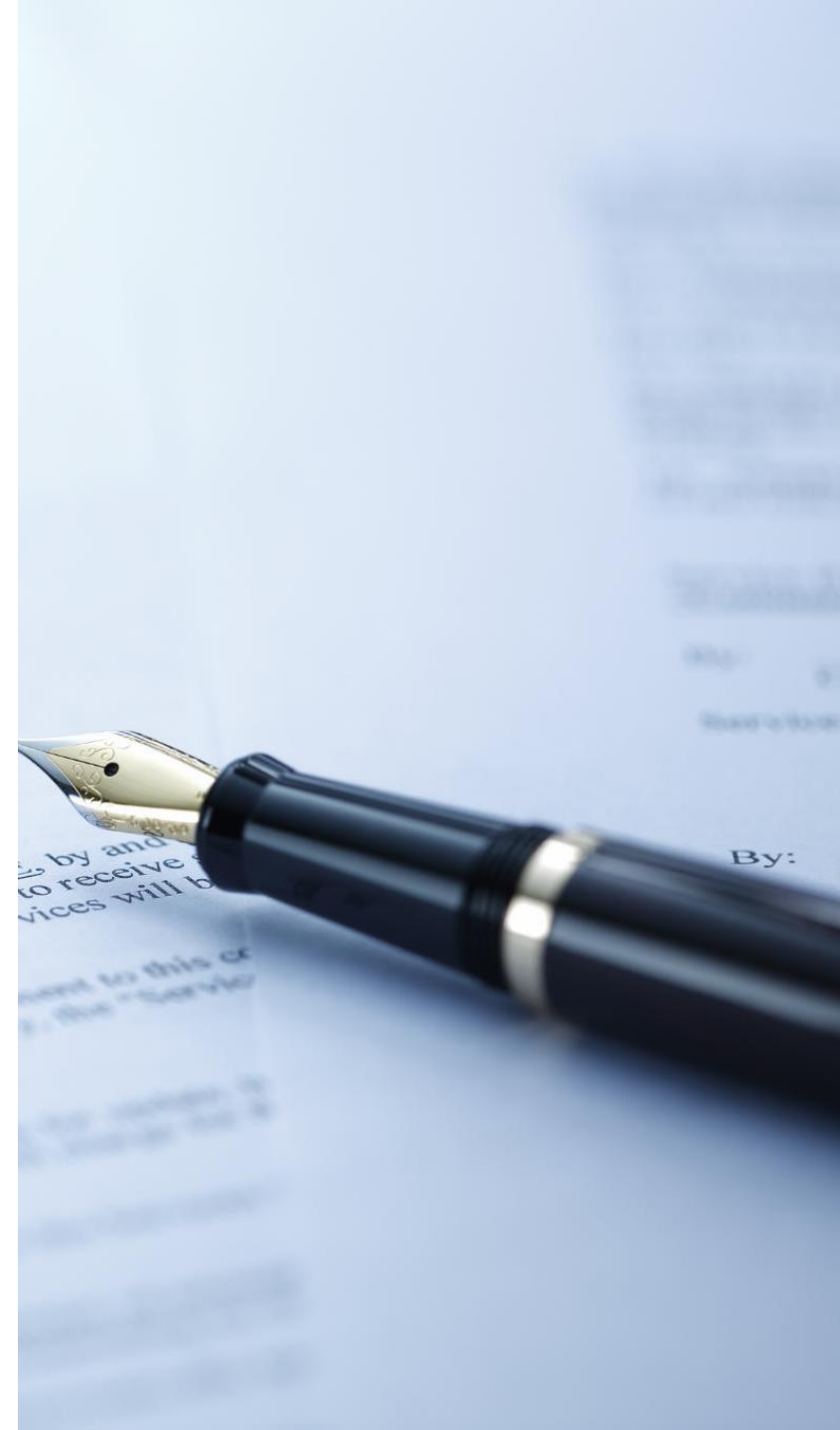
Maintain transparent dialogue about AI use, answer questions, and provide client education on AI ethics and oversight.

Detailed and Transparent Billing

Clearly reflect attorney skill alongside AI contributions in billing, avoiding vague entries to ensure client clarity.

Internal Policies and Training

Implement firm policies on AI disclosure and conduct regular ethics training and compliance audits for staff.



Billing Hypotheticals and Discussion Points

Reasonableness of AI-Generated Fees

Fee reasonableness depends on attorney skill and customization, not just AI drafting speed.

Disclosure of AI Usage

Rule 1.5(b) requires clear disclosure when AI significantly affects service quality or efficiency.

Importance of Transparency

Transparency about AI use builds client trust and clarifies the value of attorney oversight.

Ensuring Transparency Practices

Establish firm policies and regular communication to maintain transparency about AI usage.





Client Communications: Risks and Benefits of AI-Enhanced Interactions



Case Study: AI Use by Clients and Its Impact on Communication

Communication Challenges

Client's inconsistent communication led to confusion and misinterpretation by the attorney throughout the case.

AI Use Without Context

Client used AI tools to respond without full context, causing erratic and contradictory messages.

Impact on Legal Strategy

Erratic client responses disrupted strategic conversations and complicated case progress.

Revelation and Understanding

Client revealed literacy difficulties and AI usage, clarifying prior inconsistent communications.

Best Practices for Clear and Effective Client Communication

Awareness of AI Usage

Clients may use AI tools without disclosing it, which can affect communication quality and case strategy.

Legalese Translation Importance

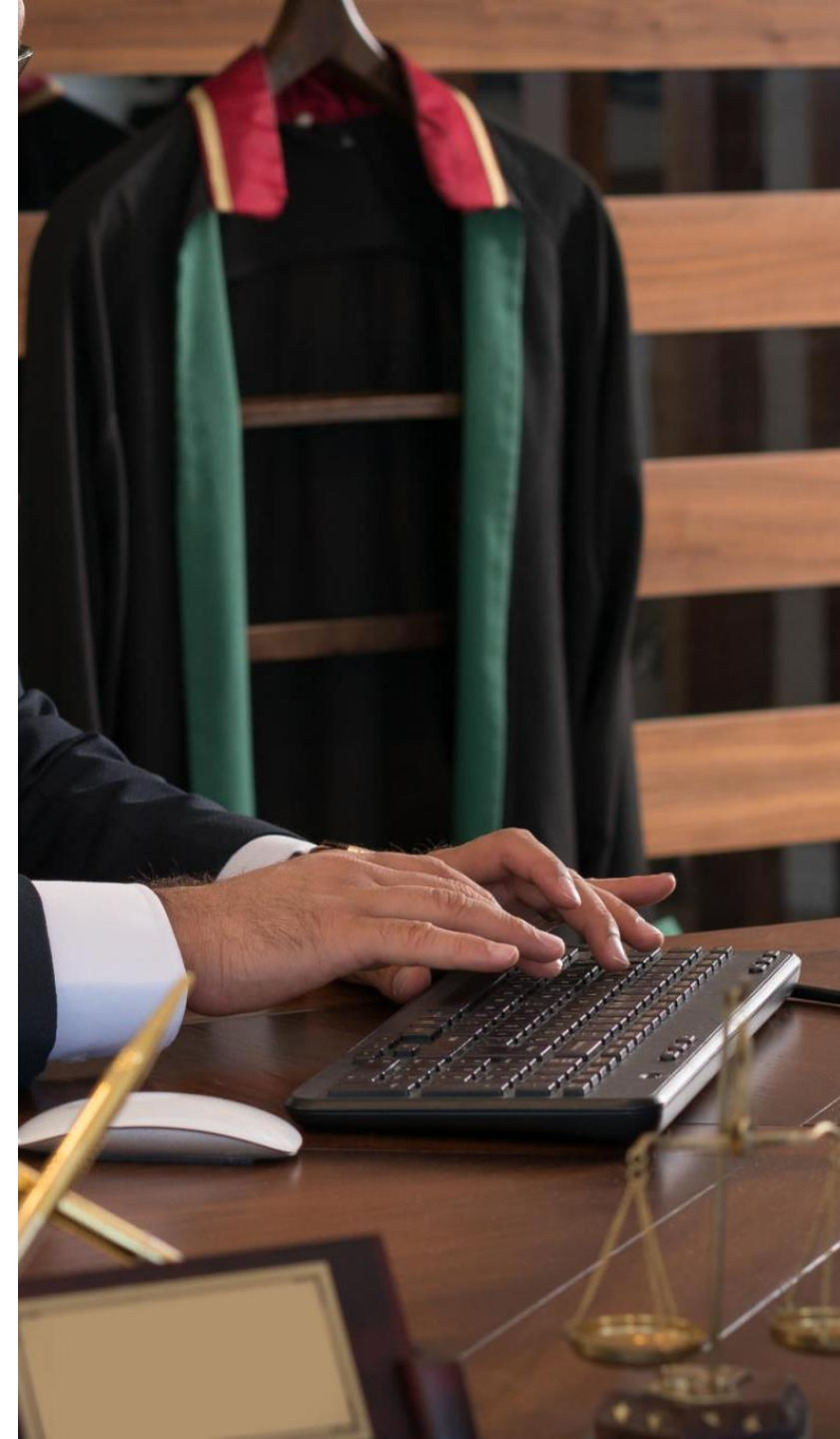
Attorneys often use complex legal terms unfamiliar to clients; simplifying language improves understanding and trust.

AI as Communication Aid

AI tools like ChatGPT can help translate legal jargon into layman's terms, enhancing client responses and productivity.

Verify AI Accuracy

Attorneys must ensure AI-generated explanations are legally accurate to maintain trust and effective communication.



Ethical Rules for AI-Enhanced Client Communications

Client Communication Clarity

Attorneys must keep clients informed and explain issues clearly for informed decision-making.

Tailored Communication

Communication should be tailored to accommodate client understanding and communication challenges.

Confidentiality Concerns

Use of third-party AI platforms may risk inadvertent disclosure of confidential client information.

Precautionary Measures

Attorneys must implement safeguards to protect client communications when using AI tools.



Hypotheticals and Practical Recommendations for Client Communication

Ethical Obligations in AI Misunderstandings

Attorneys must investigate communication barriers and inform clients about AI-related risks to ensure understanding and clarity.

Confidentiality and AI Use

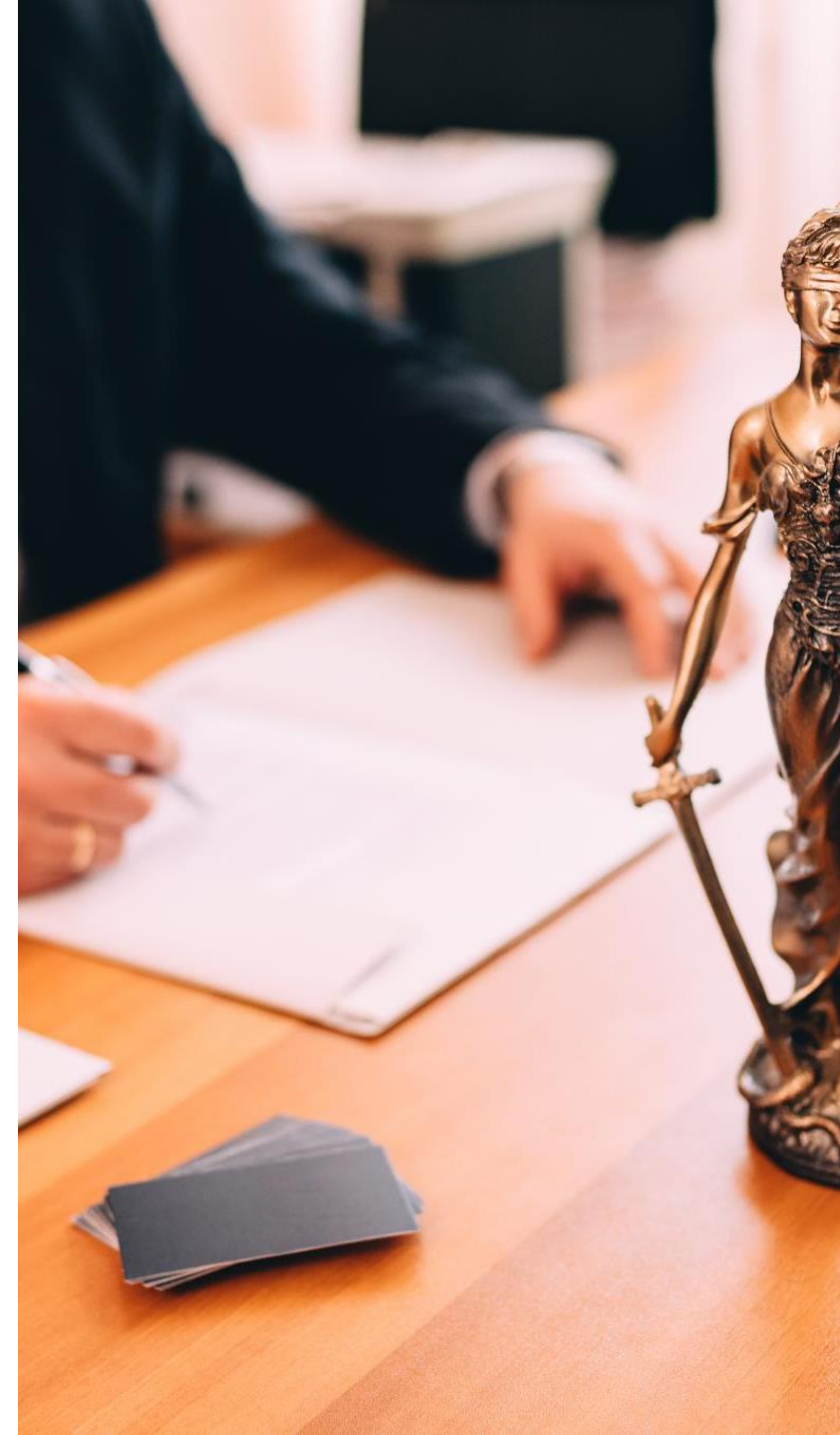
Clients should be cautioned about confidentiality risks when using third-party AI tools with sensitive legal information.

Proactive Client Communication

Use plain language, alternative communication methods, and firm policies to address client comprehension challenges effectively.

Firm Policies on AI Use

Establish firm-wide disclaimers and engagement letter guidelines about AI risks to protect attorney-client privilege.



From Likes to Ledgers: Ethical Tech Practices in the Modern Law Firm

Sarah Nelson, *Jackson Nelson, PLLC*

Tammy McClenney, *Randall, McClenney,
Daniels & Dunn*

Megan Wickre, *Wickre Law, PLLC*



Rule 1.5: Fees

A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- the fee customarily charged in the locality for similar legal services;
- the amount involved and the results obtained;
- the time limitations imposed by the client or by the circumstances;
- the nature and length of the professional relationship with the client;
- the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- whether the fee is fixed or contingent.



Rule 1.5: Fees

The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.



Rule 1.5: Fee

A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall state in writing the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.



Rule 1.5: Fees

A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee:

- in a domestic relations matter, except in rare instances; or
- for representing a defendant in a criminal case.



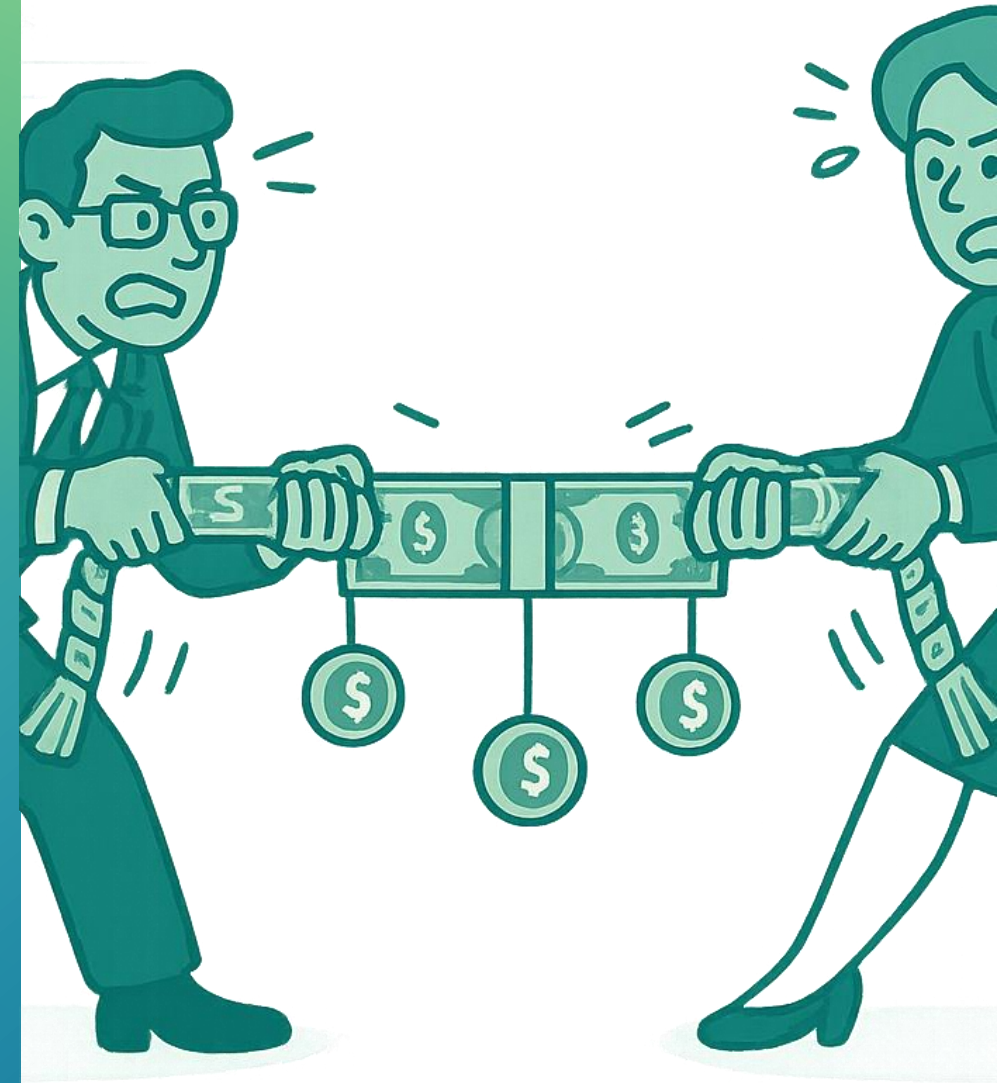
Rule 1.5: Fees

Fee Division

A division of a fee between lawyers who are not in the same firm may be made only if:

1. The client is advised of and consents to the participation of all the lawyers involved;
2. The terms of the division of the fee are disclosed to the client and the client consents thereto;
3. The total fee is reasonable; and
4. The division of fees and the client's consent is obtained in advance of the rendering of legal services, preferably in writing.

*This does not prohibit or regulate the division of fees between attorneys who were previously associated in a law firm or between any successive attorneys in the same matter. In any such instance, the total fee must be reasonable.



Rule 1.5: Fees

Nonrefundable advanced legal fees are prohibited.



What types of funds must be held in the lawyer's trust account?

The types of funds required to be held in the lawyer's trust account are:

- all funds given to the lawyer by the client that are to be applied against future legal fees;
- all funds placed with the lawyer for present or future use on the client's behalf or at the client's direction;
- all funds received by the lawyer for future litigation expenses;
- all funds received by the lawyer for the benefit of the client or his designees;
- all funds held by the lawyer on behalf of a third party; and
- all funds held by the lawyer as a fiduciary.

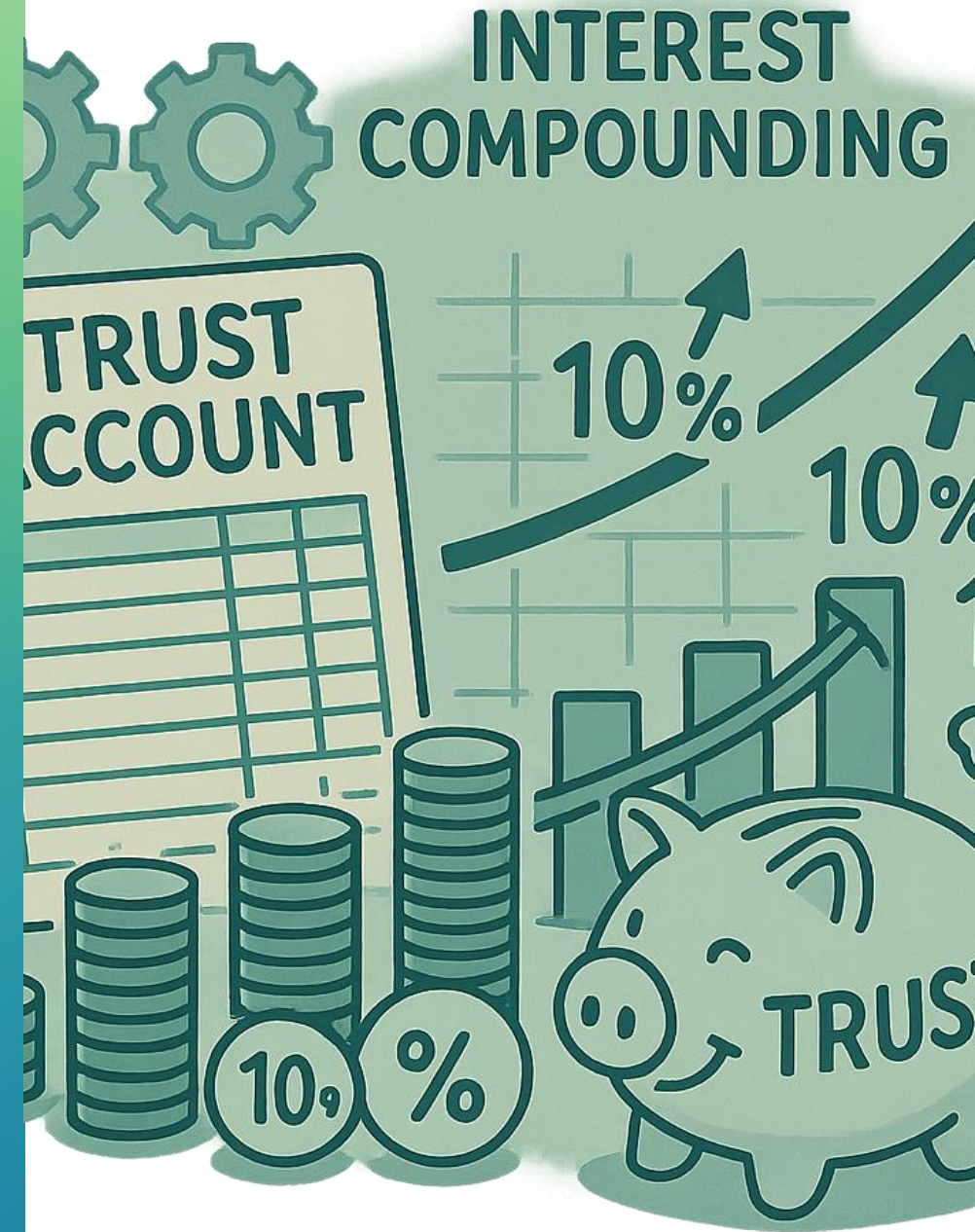
[Rule 1.15 \(a\)](#)



"IOLTA" and "Other" Trust Accounts

A. Do all lawyer trust accounts have to be IOLTA accounts?

For the most part, yes. In March 2022, the Supreme Court of Virginia amended [Part Six, Section IV, Paragraph 20](#) (the IOLTA Rule) to require any Virginia lawyer who receives short-term or nominal client trust funds to place those funds in pooled, interest-bearing IOLTA accounts, thus removing from the Rule the previous option of non-interest-bearing client trust accounts.



Exemptions to IOLTA:

An attorney may be eligible for exemption from participation in the Virginia IOLTA program if:

- the attorney never receives client funds that would require the establishment of a trust account; or
- the attorney is not engaged in the practice of law in Virginia, does not receive client funds in Virginia, and does not receive funds from Virginia clients; or
- the attorney/law firm maintains an IOLTA account in a neighboring jurisdiction where its law practice is located and certifies as such on the Virginia IOLTA compliance form; or
- the attorney is a full-time judge, government attorney, military attorney, or an associate member of the Virginia State Bar.



Can a lawyer maintain a sum of money on deposit in his/her trust account for his/her own purposes?

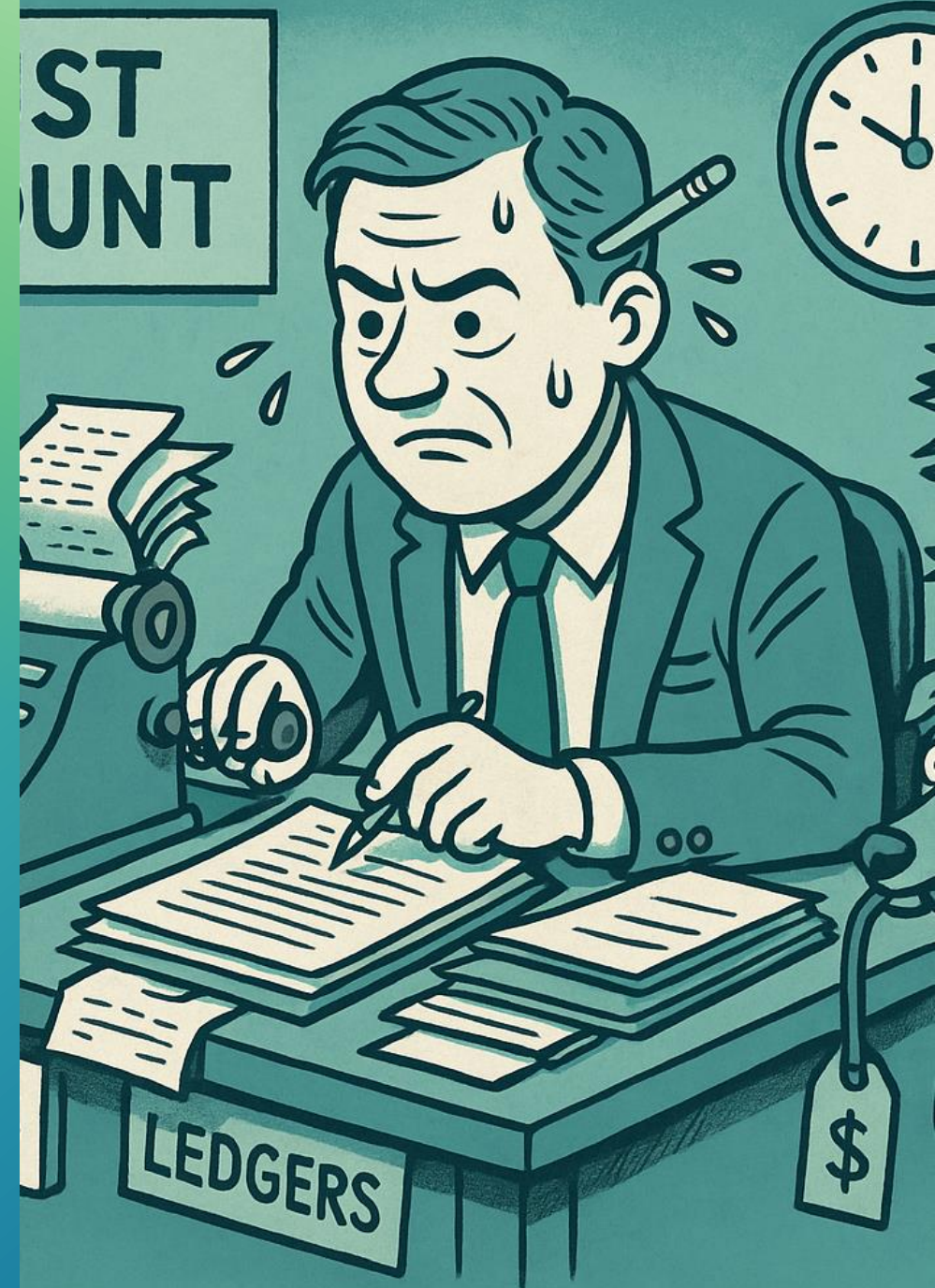
Generally, no. There are only 2 exceptions:

- the lawyer may deposit enough of his/her own funds to cover bank charges made for administration of the trust account or to maintain a required minimum balance to avoid service fees ([See Rule 1.15\(a\)\(3\)](#) and [LEO 1510](#)); and
- when “funds in which two or more persons (one of whom may be the lawyer) claim and interest” and those interests are disputed, those funds “shall be held in the trust account until the dispute is resolved.” [Rule 1.15 \(a\)\(3\)\(ii\)](#).



Rule 1.15 requires the lawyer to maintain the following reports:

1. a monthly reconciliation “of the client ledger balance for each client, other person, or entity on whose behalf money is held in trust.” [Rule 1.15 \(d\)\(3\)\(i\)](#);
2. a monthly reconciliation of the trust account balance ([Rule 1.15 \(d\)\(3\)\(ii\)](#)); and
3. a monthly reconciliation of the trust account balance and the client ledger balance. ([Rule 1.15 \(d\)\(3\)\(iii\)](#))



E. What happens when the law firm has monies in trust that belong to clients, and the firm is unable to locate the client?

The firm can use a reasonable amount of the client's monies to try to locate the client. Otherwise, the lawyer is required to turn over to the Commonwealth unclaimed funds after 5 years of not being able to locate the client. (Virginia Disposition of Unclaimed Property Act, [Virginia Code Section 55.1, Chapter 25](#)). (See also "General Legal Ethics Questions #1. The Missing Client & Abandoned Client Funds.")



For how long must books and records be maintained?

At least 5 calendar years after termination of representation or fiduciary responsibility. [Rule 1.15 \(c\)\(4\)](#)



To Wrap Up: Some General Malpractice Tips

WHAT NOT TO DO



MALPRACTICE?



MALPRACTICE?



MALPRACTICE?



MALPRACTICE?

MALPRACTICE?

Be pleasant and courteous to office staff, clients, and adversaries. It's contagious.



Use engagement letters in your representations, understanding that this creates a written contract with a five-year statute of limitations.



- Carefully evaluate a potential client on the first visit just as you would have the client evaluate you. Remember, you do not have to accept the representation of every potential client you meet.
- Never accept a representation that is beyond your own expertise; do not be afraid to refer the potential client to other lawyers or consider associating yourself with an attorney who does have the necessary expertise.



Communication. -
Communication. -
Communication. Year
after year, one of the
most common Bar
complaints in Virginia is
failure to communicate.



Conclusion



Importance of Ethical Tech

Ethical technology use is essential for maintaining professionalism in family law practice.

Areas of Vigilance

Attorneys must monitor AI, marketing, billing, social media, and client communications closely.

Protecting Client Interests

Upholding ethical practices protects clients and ensures trust in legal services.